

City of Seattle
OFFICE OF HEARING EXAMINER

HEARING EXAMINER
RULES OF PRACTICE AND PROCEDURE
[As amended, August 1, 1995]

Office of Hearing Examiner
Seattle Municipal Tower
700 5th Avenue, Suite 4000
Seattle, Washington 98124-4729
(206) 684-0521

These Hearing Examiner Rules of Practice and Procedure are adopted pursuant to the Seattle Administrative Code, Chapter 3.02 of the Seattle Municipal Code, to govern practice and procedure before the City of Seattle Hearing Examiner.

By this adoption, the following rules previously adopted by the Hearing Examiner are, except as provided in HER 1.02 for matters pending prior to adoption, repealed and no longer effective: Hearing Examiner Appeal Rules, Hearing Examiner Rules on Council Conditional Uses and Rezones, Floating Homes Appeals, and Rules Governing Hearing Examiner Review and Decision on Landmarks Preservation Board Recommendations on Controls and Incentives.

Date of Adoption: October 11, 1994

Sue A. Tanner
Hearing Examiner
Office of Hearing Examiner
Seattle Municipal Tower
700 5th Avenue, Suite 4000
Seattle, Washington 98124-4729
(206) 684-0521

HEARING EXAMINER RULES OF PRACTICE AND PROCEDURE

Section 1	GENERAL PROVISIONS	1
1.01	Applicability	1
1.02	Effective Date	1
1.03	Interpretation	1
Section 2	RULES OF GENERAL APPLICATION	2
2.01	Scope	2
2.02	Definitions	2
2.03	Hearing Examiner's Jurisdiction	4
2.04	Computation of Time	4
2.05	Filing and Service of Documents	4
2.06	Expeditious Proceedings	4
2.07	Scheduling Hearings	4
2.08	Consolidation	5
2.09	Prehearing Conference	5
2.10	Interference Prohibited	5
2.11	Presiding Official	5
2.12	Disqualification or Recusal of an Examiner	6
2.13	Oath or Affirmation	6
2.14	Witnesses	7
2.15	Expected Conduct	7
2.16	Motions	7
2.17	Evidence	8
2.18	Official Notice	8
2.19	Site Inspection	9
2.20	Continuing or Reopening Hearing	9
2.21	Leaving the Record Open	9
2.22	Distribution of Decisions and Recommendations	9
2.23	Remand	10
2.24	Termination of Jurisdiction	10
2.25	Clerical Errors	10
2.26	Proceedings Recorded	10
2.27	Disclosure of Public Records	11
2.28	Transcript of Proceedings	11
2.29	Retention of Records	11
2.30	Transmittal of Records	11
2.31	Recording Devices	11
2.32	Appearance of Fairness	11
2.33	Accessibility	11

Section 3	APPEAL RULES	12
3.01	Filing	12
3.02	Dismissal	12
3.03	Automatic Appeal	13
3.04	Clarification	13
3.05	Amendment	13
3.06	Withdrawal	13
3.07	Party Representative Required	13
3.08	Notice of Appearance	14
3.09	Intervention	14
3.10	Notice of Hearing	14
3.11	Discovery	15
3.12	Subpoenas	15
3.13	Parties' Rights and Responsibilities	16
3.14	Default	16
3.15	Hearing Format	16
3.16	Communications From Non-Parties	17
3.17	Burden of Proof	17
3.18	Hearing Examiner's Decision	18
3.19	Record	19
3.20	Reconsideration	19
3.21	Subsequent Appeal	19
Section 4	RULES FOR SPECIFIC CASES	20
4.01	Floating Home Moorage Fee Increases	20
4.02	Seized Property Claims	22
4.03	Automatic Appeals	23
4.04	Civil Service Appeals	24
4.05	Noise Ordinance Appeals	24
4.06	Discrimination Complaints	24
Section 5	RECOMMENDATIONS TO CITY COUNCIL	25
5.01	Public Hearing Notice	25
5.02	Nature and Purpose of Proceedings	25
5.03	Rights of Parties and Interested Persons	26
5.04	Format of Public Hearing	26
5.05	Hearing Examiner's Recommendation	26
5.06	Record of the Hearing Examiner's Recommendation	27

SECTION 1 GENERAL PROVISIONS

1.01 APPLICABILITY

These Hearing Examiner Rules (Rules) are adopted to supplement the ordinance requirements for matters within the Hearing Examiner's jurisdiction and govern administrative practice and procedure before the Hearing Examiner. In any case of conflict between a Hearing Examiner Rule (HER) and the Seattle Municipal Code (Code), the Code shall control.

1.02 EFFECTIVE DATE

These Rules shall apply to all matters filed with or otherwise properly before the Hearing Examiner on or after the effective date of adoption of these Rules by the Hearing Examiner.

1.03 INTERPRETATION OF RULES

(a) The Hearing Examiner shall interpret the Hearing Examiner Rules of Practice and Procedure and determine how the Rules apply in specific instances. An affected party may petition the Hearing Examiner during the pending of an appeal to request a declaratory ruling regarding the applicability of these Rules to specific actual circumstances. Except during hearing, such request must be in writing and clearly identify the subject Rule(s) and describe the circumstances for which the declaratory ruling is sought.

(b) Where questions of practice and procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure that she or he deems most appropriate and consistent with providing fair treatment and due process. In making such determinations, the Hearing Examiner may look to the current Civil Rules of Superior Court for guidance.

SECTION 2 RULES OF GENERAL APPLICATION

2.01 SCOPE

Rules in this section apply generally to all matters where the Hearing Examiner has authority to decide or recommend the outcome.

2.02 DEFINITIONS

The following definitions shall apply unless the context or subject matter requires otherwise:

(a) "Affidavit" - a written or printed statement declared or certified to be true and correct under penalty of perjury under the laws of the state of Washington.

(b) "Appeal" - a challenge to a decision or other action where the Code or other authority authorizes the City's Hearing Examiner to review and decide.

(c) "Appeal hearing" - a hearing held by the Hearing Examiner to consider an appeal of a decision or other action where the Hearing Examiner has been granted jurisdiction to hear and decide such an appeal. In these Rules an "appeal hearing" is distinguished from a "public hearing" where the Hearing Examiner is empowered to make a recommendation to the City Council, rather than making a decision on an appeal.

(d) "Appellant" - the person(s), organization, association, corporation, or other entity who files a complete and timely appeal of a decision or other appealed action.

(e) "Applicant" - the person(s), organization, association, corporation or other entity who files an application or otherwise formally requests a permit or other type of City action, interpretation, or authorization which is the subject of an appeal or other review by the Hearing Examiner.

(f) "Code" - Seattle Municipal Code (SMC).

(g) "Days" - calendar days.

(h) "Department" - the department, agency, board, commission or other City entity responsible for the decision or action that is subject to appeal or other review by the Hearing Examiner.

(i) "Director" - the head of the department, agency, board or commission, or other unit of City government responsible for the decision or other action that is subject to appeal or other review by the Hearing Examiner.

(j) "Examiner" - the Hearing Examiner, or a Deputy Hearing Examiner or a Hearing Examiner Pro Tempore who has been delegated responsibility by the Hearing Examiner to conduct the hearing or otherwise preside over a particular matter.

(k) "Ex parte communication" - a communication between one party and the Examiner in the absence of the other party(s).

(l) "Hearing Examiner" - the official appointed by the City Council pursuant to SMC Chapter 3.02, to serve as the City's Hearing Examiner; also used when referring to a Deputy Hearing Examiner or Hearing Examiner Pro Tempore appointed by the Hearing Examiner to preside over a particular matter.

(m) "Interested person" - any individual, or public or private organization of any character, significantly affected by, or interested in proceedings before the Hearing Examiner, including any party.

(n) "Motion" - a request made to the Hearing Examiner, whether written or oral, for an order or other ruling.

(o) "Offer of proof" - a chance to state for the record what the evidence would have shown if it had been admitted.

(p) "Order" - a ruling, instruction, or other directive issued by the Hearing Examiner in response to a request or motion by a party, or on the Hearing Examiner's own initiative. Where the underlying ordinance establishing the Hearing Examiner jurisdiction so provides, an order can direct how the Hearing Examiner's decision is to be implemented and may be issued as part of that decision or separately from it.

(q) "Party" - the person(s), group, organization, corporation, or other entity that has filed an appeal, or is granted right of appeal automatically by ordinance; the person(s), group, organization, corporation, or other entity granted party status through intervention; Director of the City department or other agency that made the decision or took the action that is subject to the appeal; the person(s), group, organization, corporation, or other entity who filed the application, request, or petition for a permit or other type of City authorization or action which is the subject of the appeal; the owner(s) of the property subject to the City decision or other action; floating home mooring site lessees petitioning for review of rate increases; and, moorage owner(s) of the moorage subject to the petition filed by the floating home moorage site lessees.

(r) "Public hearing" - a hearing held by the Hearing Examiner for the purpose of preparing a recommendation for the City Council (see "Appeal hearing").

(s) "Representative" - that individual designated by a party to be the official contact person and to speak for the party. Unless the applicable underlying substantive law or regulation establishing the Hearing Examiner's jurisdiction specifies otherwise, a representative is not required to be an attorney.

(t) "Rules" - the Hearing Examiner Rules of Practice and Procedure, as currently amended.

(u) "Timely" - within the time prescribed by applicable ordinance or, in the absence of ordinance provision, the time prescribed by Hearing Examiner rule, or within the time determined by the Hearing Examiner.

2.03 HEARING EXAMINER'S JURISDICTION

The Hearing Examiner can only hear and decide appeals and make recommendations in those matters and on those issues where ordinance or other appropriate authority grants to the Hearing Examiner the authority to do so.

2.04 COMPUTATION OF TIME

Except as otherwise provided by the Code, computation of any period of time prescribed or allowed for matters before the Hearing Examiner, shall begin with the first day following that on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national, state or City holiday, the period shall extend to the end of the next day when the Hearing Examiner's office is open for business. [Amended 08/01/95]

2.05 FILING AND SERVICE OF DOCUMENTS

(a) Documents shall be deemed filed with the Hearing Examiner on receipt at the Office of Hearing Examiner unless the Hearing Examiner has specified otherwise.

(b) Documents shall be served personally or, unless otherwise provided by applicable ordinance, by first-class, registered, or certified mail, or by facsimile (fax) transmission, or, in the case of service to City agencies, by the City's regular interoffice mail. Service shall be regarded as complete upon deposit in the regular facilities of the U.S. Mail of a properly stamped and addressed letter or packet, or at the time personally delivered, or transmitted by fax.

2.06 EXPEDITIOUS PROCEEDINGS

To the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. At every stage in the proceedings, all parties shall make every reasonable effort to avoid delay.

2.07 SCHEDULING HEARINGS

(a) Promptly following receipt of a valid appeal, the Hearing Examiner shall schedule a hearing consistent with the requirements of the applicable ordinance(s) and these Rules.

(b) Upon being notified of a Department's decision or action for a matter having an automatic appeal or other opportunity for hearing (see HER 4.03), the Hearing Examiner shall promptly schedule a public hearing.

2.08 CONSOLIDATION

Where practical, feasible, and consistent with ordinance requirements, all matters under the jurisdiction of the Hearing Examiner relating to the same matter should be consolidated for hearing. The Hearing Examiner may order consolidation with or without a request from any party.

2.09 PREHEARING CONFERENCE

(a) The Hearing Examiner may on his or her own order, or at the request of a party, hold a conference prior to the hearing to consider:

- (1) Identification, clarification, and simplification of the issues;
- (2) Disclosure of witnesses to be called and exhibits to be presented;
- (3) Motions;
- (4) Other matters deemed by the Hearing Examiner appropriate for the orderly and expeditious disposition of the proceedings.

(b) Prehearing conferences may be held by telephone conference call.

(c) The Hearing Examiner shall give notice to all parties of any prehearing conference. Notice may be written or oral.

(d) All parties shall be represented at any prehearing conference unless they waive the right to be present or represented, and are granted permission by the Hearing Examiner not to attend.

(e) Following the prehearing conference, the Hearing Examiner may issue an order reciting the actions taken or ruling on motions made at the conference.

2.10 INTERFERENCE PROHIBITED

In the performance of adjudicative functions in deciding appeals and in the preparation of recommendations, the Hearing Examiner is an independent official and shall not be responsible to or subject to the supervision or direction of any elected official, officer or employee of any department, or any other person whether or not associated with Seattle City government.

2.11 PRESIDING OFFICIAL

(a) The Hearing Examiner shall assign a duly qualified Examiner to preside over hearings held under these Rules.

(b) The Examiner conducting a hearing shall have the duty to ensure a fair and impartial hearing, to take all necessary action to avoid undue delay in the disposition of proceedings, to gather facts necessary to making the decision or recommendation, and to maintain order. The Examiner shall have all powers necessary to these ends, including, but not necessarily limited to the following:

- (1) Determine the order of presentation of evidence;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas;
- (4) Rule on offers of proof and receive evidence;
- (5) Rule on procedural matters, objections and motions;
- (6) Question witnesses and request additional exhibits;
- (7) Permit or require oral or written argument or briefs and determine the timing and format for such submittals;
- (8) Regulate the course of the hearings and the conduct of the parties and others so as to maintain order and provide for fair hearing;
- (9) Hold conferences for settlement, simplification of issues, or for any other proper purpose;
- (10) Make and issue the decision or recommendation.

2.12 DISQUALIFICATION OR RECUSAL OF AN EXAMINER

(a) In the interest of fairness to the parties, an Examiner on his/her own initiative may recuse himself/herself from hearing a particular matter in the event of personal bias, prejudice, financial interest, or other substantial reason.

(b) Prior to hearing, a party may request that the Hearing Examiner assign a different Examiner to hear a particular matter. The request must be in writing, submitted at least seven (7) days prior to the day the hearing is to begin, with a copy of the request to each of the other parties. The request must set forth the reasons for the belief that personal bias, prejudice, financial interest, or other substantial reason for disqualification or recusal exists.

(c) In case of disqualification or recusal, the Hearing Examiner shall reassign the matter to a different Examiner.

2.13 OATH OR AFFIRMATION

(a) All testimony before the Hearing Examiner at hearing shall be taken under oath or affirmation to tell the truth.

(b) Every interpreter, before beginning to interpret, shall take an oath that a true interpretation shall be made that is understandable for the person needing the interpreter and that the interpreter shall repeat statements in English to the Examiner, to the best of the interpreter's ability. See also HER 2.33(b).

2.14 WITNESSES

(a) All witnesses testifying at hearing must take an oath or affirmation to be truthful. All witnesses are subject to cross-examination by the other party(s).

(b) The rules of privilege shall be effective to the extent recognized by law.

(c) Hearing Examiner hearings are open to the public. However, in appeal hearings, persons who are not parties are generally not permitted to testify unless called as witnesses.

(d) The Examiner may limit the length of testimony to expedite the proceedings and avoid the necessity to continue the hearing. Maximum practicable advance notice will be provided if such time limitations are to be imposed. If parties are unable to complete their arguments and testimony within the allotted time, an opportunity will be granted to submit written materials after the close of the hearing; other parties will be allowed an opportunity to offer written rebuttal to any such materials.

(e) At the discretion of the Examiner, or where the parties agree and the rights of the parties will not be prejudiced, the Examiner may allow testimony via telephone or television or similar electronic means. Each party to the proceeding shall have the opportunity to hear (or, if televised, to both hear and see) testimony given in this manner and to question the person giving such testimony.

2.15 EXPECTED CONDUCT

(a) All persons appearing before the Hearing Examiner shall conduct themselves with civility and courtesy to all persons involved in the hearing.

(b) No party or other person shall communicate with an Examiner presiding over a matter or with any employee of the Hearing Examiner's Office in an attempt to influence the outcome or to discuss the merits of that matter.

(c) Except for communications regarding procedural matters (which are permitted), no party or other person shall make or attempt *ex parte* communication with the Examiner regarding a pending appeal or other contested case.

(d) If a substantial prohibited *ex parte* communication is made, such communication shall be publicly disclosed by the Examiner: any written communications, and memorandums summarizing the substance and participants of all oral communications, shall promptly be made available to the parties for review and an opportunity to rebut those communications.

2.16 MOTIONS

(a) All motions, other than those made during a hearing, shall be in writing, and shall state the order or relief requested and the grounds for the motion. Every motion and

answering statement and accompanying papers, shall be served on each party representative on the day it is filed with the Hearing Examiner.

(b) Within seven (7) days after service of any written motion, or such longer or shorter period of time as may be designated by the Hearing Examiner, the other party(s) shall file a written answer. When the Hearing Examiner has received the answering statement(s), or the seven (7) days or other period of time designated by the Hearing Examiner has elapsed, the Hearing Examiner shall rule on the motion. Failure of a party to file a timely response, may be considered by the Hearing Examiner as evidence of that party's consent to the motion.

(c) The Hearing Examiner may call for oral argument prior to ruling.

(d) For motions made at hearing or for motions made for the extension of time or the expedition of hearings, the Hearing Examiner may waive the requirements of this section and may also rule upon such motions orally.

2.17 EVIDENCE

(a) Evidence, including hearsay, may be admitted if, in the judgment of the Examiner, it is relevant to the issue(s) on appeal, comes from a reliable source, and has probative (proving) value. Such evidence is that which would commonly be relied upon by responsible persons in the conduct of their important affairs.

(b) The Examiner may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.

(c) Opinion evidence of non-experts presented at public hearings may be admitted into the record in proceedings where the Hearing Examiner is to prepare a recommendation for the City Council. Opinion evidence presented by non-experts at appeal hearings is discouraged but may be admitted, although it need not be given weight by the Examiner.

(d) Documentary evidence may be received in the form of copies or excerpts. The Examiner may require that the parties be given an opportunity to compare the copy with the original, and that the complete document from which an excerpt is taken be made available for inspection by all parties.

2.18 OFFICIAL NOTICE

(a) The Examiner may take official notice of judicially cognizable facts. In addition, the Examiner may take notice of general, technical, or scientific facts within his or her specialized knowledge.

(b) Parties must be notified during the hearing, or before issuance of the decision, of the specified facts or material noticed and the source thereof, and afforded an opportunity to contest or rebut the facts or material so noticed. The Examiner shall not take such notice of disputed adjudicative facts that are at the center of an appeal.

(c) A Hearing Examiner ruling, decision, or recommendation may refer to and utilize any part of the Code and any issued Hearing Examiner decision.

2.19 SITE INSPECTION

Where it would assist the Examiner in clarifying or understanding the evidence adduced at hearing, the Examiner may inspect property subject to an appeal or recommendation prior to the close of the record.

2.20 CONTINUING OR REOPENING HEARING

(a) A scheduled hearing may be continued for good cause as determined by the Hearing Examiner. Written notice of the date, time, and place of the continued hearing shall be provided to each party. The notice of a rescheduled hearing need not observe the time requirements to which the original notice was subject.

(b) Prior to the issuance of the subject decision or recommendation, the Examiner may continue or reopen proceedings for good cause and may permit or require written briefs or oral argument.

(c) If the Examiner determines at hearing that there is good cause to continue such proceeding and then and there specifies the date, time, and place of the new hearing, no further notice is required.

(d) If a matter is reopened after conclusion of the hearing, parties shall be provided not less than ten (10) days notice of the reopened hearing.

2.21 LEAVING THE RECORD OPEN

(a) The Examiner may leave the record of hearing open at the conclusion of a hearing in order to receive argument or for other good purpose. Parties shall be provided notice of the consideration of any evidence received after hearing and shall have an opportunity to review such evidence and to file rebuttal evidence or argument.

(b) Except as provided for in HER 2.20 and HER 2.23, information submitted after the close of the record shall not be included in the hearing record or considered by the Examiner making the decision or recommendation.

2.22 DISTRIBUTION OF DECISIONS AND RECOMMENDATIONS

A copy of the Hearing Examiner's decision or recommendation shall be distributed to each party representative, to those persons who have specifically requested a copy, and to others as specified by applicable ordinance(s).

2.23 REMAND

(a) Prior to the issuance of the Hearing Examiner's recommendation or Hearing Examiner's decision on an appeal, if the Examiner determines that information, analysis, or

other material necessary to the Hearing Examiner's recommendation has not been provided, or, in the case of an appeal, that there is a lack of information, analysis, or other material needed to satisfy the provisions of relevant regulations, the matter may be remanded to the Department for the addition of that information, analysis, or other material.

(b) Where the Hearing Examiner's decision is to remand the matter to the Department for additional information, analyses, or other material, the Hearing Examiner shall retain jurisdiction in order to review the adequacy of that information, analysis, or other material. The decision shall expressly state that jurisdiction is retained and what information, analysis, or other material is to be provided, and it may indicate when it is to be submitted. A copy of that information, analysis, or other material shall also be provided to each party to the proceeding, except where the size or condition of the required materials make copying impractical, notification to the other parties of the submittal, shall be sufficient. The parties shall have an opportunity to review, comment upon, and submit rebuttal to the information, analysis, or other material submitted. At the discretion of the Examiner, the hearing may be reopened following such submittal.

(c) Where the decision of the Hearing Examiner is to remand for the preparation of a new departmental decision, the Hearing Examiner's jurisdiction is terminated and Director's subsequent decision shall be issued and subject to appeal in accordance with applicable ordinance(s).

2.24 TERMINATION OF JURISDICTION

The jurisdiction of the Hearing Examiner is terminated upon the issuance of the decision or recommendation except where jurisdiction is expressly retained, or as otherwise provided in ordinance or in these Rules (see *e.g.*, HER 2.25 and HER 3.20), or when a matter is remanded to the Hearing Examiner by the City Council or by a reviewing court.

2.25 CLERICAL ERRORS

Clerical mistakes in decisions, recommendations, orders, or other parts of the record, and errors arising from oversight or omission, may be corrected by Order at the Hearing Examiner's initiation, or in response to the motion of any party.

2.26 PROCEEDINGS RECORDED

All proceedings before the Hearing Examiner shall be electronically recorded. The recordings of hearings shall be part of the official case record. Copies of the recordings shall be made available to the public upon request, subject to payment of a reasonable fee for copying.

2.27 DISCLOSURE OF PUBLIC RECORDS

Hearing Examiner decisions and recommendations, the hearing record, and associated official files, are public records and shall be available for public review.

2.28 TRANSCRIPT OF PROCEEDINGS

(a) Anyone desiring a certified transcript of a hearing must obtain a duplicate copy of the hearing tapes from the Office of Hearing Examiner and be responsible for arranging and paying for the preparation of a verbatim transcript. See also HER 2.26. The completed transcript must be returned to the Hearing Examiner for certification.

(b) The parties shall have an opportunity to review and comment on the transcript. The Hearing Examiner shall resolve conflicts as to form and content of the transcript and provide a certification when such disputes are resolved and the Examiner is satisfied that the transcript provides a reliable record of the proceedings.

2.29 RETENTION OF RECORDS

The case file, including the tape recording(s) and exhibits, shall be retained by the Office of Hearing Examiner consistent with the requirements of the Public Records Act and applicable retention schedules.

2.30 TRANSMITTAL OF RECORDS

The Hearing Examiner shall promptly transmit the official records of a case upon the request of an entity having jurisdiction to review the decision or recommendation.

2.31 RECORDING DEVICES

Photographic and recording equipment may be permitted at hearings with the approval of the Examiner. The Examiner may deny or condition use of such equipment as she or he deems necessary to avoid disruption to the proceedings or prejudice to any party.

2.32 APPEARANCE OF FAIRNESS

The appearance of fairness doctrine applies to proceedings under these Rules.

2.33 ACCESSIBILITY

(a) Proceedings before the Hearing Examiner shall be accessible to the greatest extent practicable.

(b) If, in the judgment of the Examiner, a hearing impaired or non-English speaking party requires an interpreter in order to fully and fairly participate in a contested case hearing, the Examiner shall appoint a qualified and impartial interpreter in accord with the Hearing Examiner's adopted procedures for using interpreters.

SECTION 3 APPEAL RULES

In addition to the Rules of General Application in Section 2, the Rules in Section 3 shall apply to appeals (in case of conflict between the rules in Section 2 and the rules in Section 3, Section 3 shall control).

3.01 FILING

(a) Compliance with Rules. All appeals must comply with these Rules and with the requirements established in the applicable ordinance(s) under which the appeal is filed.

(b) Timeliness. To be considered timely filed, an appeal must be received in the Office of Hearing Examiner no later than 5 p.m. on the last day of the appeal period. See also HER 2.04.

(c) Fee. Any filing fee as required by SMC 3.02.125, shall accompany an appeal, unless the Hearing Examiner waives part or the entire required filing fee due to financial hardship. An appeal fee can be refunded where the Hearing Examiner determines there is not jurisdiction, as provided by applicable ordinance(s), or as otherwise deemed appropriate by the Hearing Examiner in fairness to the appellant.

(d) Contents. An appeal must be in writing and contain the following:

(1) A brief statement as to how the appellant is significantly affected by or interested in the matter appealed;

(2) A brief statement of the appellant's issues on appeal, noting appellant's specific exceptions and objections to the decision or action being appealed;

(3) The relief requested, such as reversal or modification;

(4) Signature, address, and phone number of the appellant, and name and address of appellant's designated representative, if any.

(e) Multiple appeals. More than one appeal may be filed concerning the same appealable decision or other action.

3.02 DISMISSAL

(a) An appeal may be dismissed without a hearing if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief, or it is without merit on its face, frivolous, or brought merely to secure delay.

(b) Any party may request dismissal of all or part of an appeal at any time with notice to all parties. The Hearing Examiner may make a ruling on a motion to dismiss based upon written arguments or may call for oral arguments.

(c) When the decision or action being appealed is withdrawn by the issuing Department, the appeal becomes moot and shall be dismissed.

3.03 AUTOMATIC APPEAL

Where the underlying ordinance provides that an appeal is automatic (*i.e.*, appeal hearing noticed as part of Department action), the opportunity for appeal is not dependent upon appellant's filing an appeal statement.

3.04 CLARIFICATION

The appellant shall provide clarification, additional information, or other submittal(s) as the Hearing Examiner deems necessary in order that the appeal be made complete and understandable. The Hearing Examiner shall rule on the request of any party for clarification of an appeal. Request for clarification must be made in a timely manner as to afford reasonable opportunity for other parties to prepare response(s) for hearing.

3.05 AMENDMENT

The Hearing Examiner may allow, for good cause shown, for an appeal to be amended within 10 days after it has been filed. In deciding whether to allow such an amendment, the Hearing Examiner shall attempt to ensure that the fair hearing opportunity of other parties not is prejudiced by the amendment.

3.06 WITHDRAWAL

(a) An appeal may be withdrawn only by the appellant.

(b) Where an appeal is made by several persons, a group, organization, corporation, or other entity, withdrawal shall be made by the person who had been designated as the party representative. See HER 3.07.

(c) An appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

3.07 PARTY REPRESENTATIVE REQUIRED

When a party consists of more than one individual, or is a group, organization, corporation, or other entity, the party shall designate an individual to be its representative and inform the Hearing Examiner of the name, address and telephone number of that designated representative. The rights of such an appellant shall be exercised by the person designated as the party representative. Notice or other communication to the party representative, is notice or communication to party. See also HER 3.08.

3.08 NOTICE OF APPEARANCE

When a party is represented by an attorney, the attorney shall file a notice of appearance with the Hearing Examiner and send a copy of that notice to the other parties. Where the

appellant's attorney filed the appeal and indicated his/her representative capacity, a notice of appearance does not need to be filed. The notice of appearance shall serve to designate the attorney as the party representative. See HER 3.07.

3.09 INTERVENTION

(a) Upon a showing of a substantial or significant interest that is not otherwise adequately represented, the Hearing Examiner may permit an interested person, group, organization, corporation, or other entity, who has not filed an appeal, to participate in that appeal.

(b) Except as provided in HER 3.09(d), a written request for intervention must be submitted to the Hearing Examiner at least five (5) days prior to the day on which the hearing begins. The intervention request must state the basis for the intervention and how the person, group, organization, corporation, or other entity making the request is affected by or interested in the matter appealed. In considering the requested intervention, the Hearing Examiner shall seek to ensure that intervention will not unduly delay the hearing process, will not expand the issues beyond those within the appeal, and will not prejudice the rights of any of the original parties. In granting intervention, the Hearing Examiner may limit the nature and scope of the intervention.

(c) Intervention is not a substitute means of appealing a decision for those who could have appealed but failed to do so.

(d) A substantially or significantly interested person, group, organization, corporation, or other entity who has not filed an appeal, may be allowed to intervene for the purpose of preserving the right of subsequent appeal. Such intervention may be permitted at any time up to the time of hearing.

3.10 NOTICE OF HEARING

(a) Contents. The notice of hearing shall include:

- (1) The time, place, and nature of the hearing;
- (2) The legal authority and jurisdiction for the hearing;
- (3) The file number, address, or other identifying information for the underlying decision or action being appealed;
- (4) A brief statement as to the issue(s) to be considered;
- (5) Reference to the applicable Code section(s).

(b) Time. Notice of the hearing shall be given within the time required by applicable ordinance(s). If the time for notice of hearing is not specified by the applicable ordinance(s), or applicable ordinances conflict, minimum notice shall be 20 days as specified in SMC 3.02.090 for contested cases. Consistent with SMC 23.02.090, a hearing may be set on shorter notice where substantial injury to a party would otherwise result, or where all parties agree to a shorter notice period.

(c) Responsibility. The Department of Planning and Development shall be responsible for serving notice of hearing for appeals filed under the Master Use Permit (MUP) process (SMC Chapter 23.76). The Hearing Examiner shall be responsible for providing notice or causing notice to be given for other hearings as required by applicable ordinance(s).

(d) Method of Service. Notice of hearing shall be given to each party in person, by U.S. mail, or for City departments, by regular interoffice mail service, unless otherwise required by applicable ordinance.

(e) Record of Notice. A copy of the notice of hearing shall be made part of each official case record.

3.11 DISCOVERY

Appropriate prehearing discovery is permitted. The Hearing Examiner may prohibit or limit discovery where the Hearing Examiner determines it to be unduly burdensome, harassing, or unnecessary under the circumstances of the appeal.

3.12 SUBPOENAS

(a) A request or motion may be made in writing for a subpoena to require a person to appear and testify at a hearing, or for a person to produce specified documents or other physical exhibits at a prehearing conference or at hearing.

(b) A request for a subpoena for a person shall: include the person's name and address; show the relevance of that person's testimony; and, demonstrate the reasonableness of the scope of subpoena sought. A request for a subpoena for documents or other physical exhibits shall: include the name and address of the person who is to produce the documents or other physical exhibit; specify the materials to be produced; indicate the relevance of the materials subpoenaed to the issues on appeal; and, demonstrate the reasonableness of the scope of the subpoena sought.

(c) The party requesting the subpoena shall be responsible for serving the subpoena. An affidavit or declaration of personal service or of mailing shall be submitted to the Hearing Examiner as proof of that service.

(d) Except as otherwise allowed by the Hearing Examiner, subpoenas shall be served no less than seven (7) days prior to the appearance or production ordered.

(e) A subpoena may be issued with like effect by an attorney of record in the proceeding. The issuing attorney must sign the subpoena.

(f) Any motion to limit or quash (*i.e.*, vacate or void) a subpoena shall be filed with the Hearing Examiner within seven (7) days of receipt of the subpoenas or such other time as specified by the Hearing Examiner.

(g) Requests for subpoenas and the rulings upon such requests may be made *ex parte* unless otherwise ordered by the Hearing Examiner.

3.13 PARTIES' RIGHTS AND RESPONSIBILITIES

(a) Each party in an appeal proceeding shall have the right to: due notice of hearing, presentation of evidence, rebuttal, objection, cross-examination, argument, and other rights determined by the Hearing Examiner as necessary for the full disclosure of facts and a fair hearing.

(b) Parties have the right to be represented by an attorney. Representation by an attorney is not required.

(c) Where a party has designated a representative, the representative shall exercise the rights of the party.

(d) All parties, witnesses, and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

3.14 DEFAULT

The Hearing Examiner may dismiss an appeal by an order of default where the appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

3.15 HEARING FORMAT

(a) Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Examiner to make the relevant evidence most readily and efficiently available to the Examiner and to provide the parties a fair opportunity for hearing.

(b) Where the Code provides that the appellant must overcome deference accorded the Director's decision being appealed, the order of hearing is generally as follows:

- (1) Examiner's introductory statement;
- (2) Parties' opening statements (optional);
- (3) Appellant's presentation of evidence;
- (4) Department's presentation of evidence;
- (5) Applicant's presentation of evidence (if applicant is not the appellant);
- (6) Rebuttal;
- (7) Closing argument of parties.

(c) Where no deference is accorded the Director's decision, the order of hearing for appeals is generally as follows:

- (1) Examiner's introductory statement;
- (2) Parties' opening statements (optional);
- (3) Department's presentation of evidence;
- (4) Appellant's presentation of evidence;
- (5) Applicant's presentation of evidence (if applicant is not the appellant);
- (6) Rebuttal;
- (7) Closing argument of parties.

(d) Notwithstanding the provisions of HER 3.15(b) and (c), the order of hearing may be modified or a different order established as the Examiner deems necessary for the clear and fair presentation of evidence. The order of the hearing may also be modified as agreed upon by the parties with the Examiner's approval.

(e) The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

3.16 COMMUNICATIONS FROM NON-PARTIES

(a) Written communications received from non-parties regarding a pending matter, shall be disclosed by the Examiner at hearing for the review of all parties.

(b) The Examiner, after considering the objections of the parties and determining that undue delay or prejudice will not result, may permit relevant oral or written statements or both, by persons who are not parties or called by parties as witnesses. Limitations may be imposed on the length of such statements and cross-examination by the parties shall be permitted.

3.17 BURDEN OF PROOF

(a) Where applicable ordinance(s) so provide, the Hearing Examiner shall accord deference or other presumption as directed by the applicable ordinance(s).

(b) Where the applicable ordinance(s) provide that the appellant has the burden, appellant(s) must show by the applicable standard of proof that the Department's decision or action is not in compliance with the ordinance(s) authorizing that decision or action.

(c) Where the applicable ordinance(s) do not provide that the appellant has the burden, the Department shall make a *prima facie* showing that its decision or action is in compliance with the ordinance(s) authorizing that decision or action.

(d) Unless otherwise provided by applicable ordinance(s), statute, or case law, the standard of proof is a preponderance of the evidence.

3.18 HEARING EXAMINER'S DECISION

(a) Issuance. The Hearing Examiner shall issue a written decision and provide a copy of that decision to each party representative within the time required by the applicable

ordinance. If more than one ordinance applies and the time limits specified conflict, the shorter period shall apply unless the parties agree to the longer period.

(b) Judgment on Relief Requested. Unless proscribed by applicable ordinance(s), the Hearing Examiner's decision may affirm, reverse, modify, or remand the Department's decision or other action which is the subject of the appeal.

(c) Contents. A decision of the Hearing Examiner on appeals shall include, but not be limited to, a statement regarding the following:

(1) Background. The nature and background of the proceeding including identification of party representatives participating in the hearing, prehearing determinations, and other similar information.

(2) Findings. The individual facts that the Examiner finds relevant, credible, and requisite to the decision, based on the evidence presented at hearing and those matters officially noticed. (This may include recitation of relevant provisions of ordinance, other regulation, or case law.)

(3) Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.

(4) Decision. The Hearing Examiner's decision as to outcome of the appeal (affirm, modify, reverse, or remand) based upon a consideration of the whole record and supported by substantial evidence in the record.

(5) Postscript. Information regarding subsequent procedural step(s), if any, for appealing the Hearing Examiner's decision.

(d) The decision may also include an order disposing of contested issues and/or directing parties to take actions consistent with the decision.

3.19 RECORD

(a) The record of an appeal shall include:

- (1) Department's decision or action being appealed;
- (2) Appeal statement;
- (3) Evidence received or considered;
- (4) Pleadings, procedural rulings, and other non-evidentiary materials that are part of the Hearing Examiner's file;
- (5) Statement of matters officially noticed, if any;
- (6) Findings, conclusions and decision of the Hearing Examiner;
- (7) Tape recording of the hearing.

(b) The Hearing Examiner's administrative file on an appeal case may include other information or materials which are not part of the evidentiary record.

3.20 RECONSIDERATION

(a) Reconsideration may be granted by the Hearing Examiner on a showing of one or more of the following:

- (1) Irregularity in the proceedings by which the moving party was prevented from having a fair hearing;
- (2) Newly discovered evidence of a material nature which could not, with reasonable diligence, have been produced at hearing;
- (3) Error in the computation of the amount of damages or other monetary element of the decision;
- (4) Clear mistake as to a material fact.

(b) Motions for reconsideration must be filed within 10 days of the date of the Hearing Examiner's decision. Unless otherwise specifically provided by the applicable ordinance(s), the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiner's decision.

3.21 SUBSEQUENT APPEAL

Hearing Examiner decisions may be appealed as provided for in applicable law. Information regarding subsequent appeal opportunities shall be provided as a postscript on the Hearing Examiner decision.

SECTION 4 RULES FOR SPECIFIC CASES

The rules in Section 4 address those specific cases where the procedures and practices must be different because the requirements and/or operation of the underlying ordinance or other substantive authority are unique. Where the Code or other substantive authority for the Hearing Examiner's jurisdiction specifies a practice or procedure different or additional to the Hearing Examiner Rules, that Code or substantive authority shall control. In the event that the rules in Section 2 or Section 3 conflict with the rules in Section 4, the rules in Section 4 shall control.

4.01 FLOATING HOME MOORAGE FEE INCREASES

In addition to the Rules of General Application in Section 2 and the Appeal Rules in Section 3, the Rules in Section 4.01 shall govern review of petitions regarding moorage fee rate increases pursuant to Chapter 7.20, Seattle Municipal Code, as amended (Ordinance 109280, as amended).

(a) Petition for Review:

(1) Jurisdiction. The Examiner shall review a moorage rate increase where at least one half of the floating home owners in the floating home moorage who are subject to a moorage fee increase in the same percentage amount, within one percent, collectively file a petition for review.

(2) Withdrawal. A petition may be withdrawn by the petitioner(s) and the request shall be granted as a matter of right.

(3) Timely Filing. A petition for review shall be submitted to the Hearing Examiner within 15 days of the moorage site lessee's receipt of written notification of the moorage fee increase.

(4) Filing Fee. The petition(s) shall be accompanied by a filing fee as specified in SMC 3.02.125. The filing fee is non-refundable, provided, however, that if no hearing is held the filing fee shall be returned.

(5) Filing the Petition. Petitioners shall collectively file a petition as provided for in SMC 7.20.080. The petitioner(s) shall serve the moorage owner(s) with a copy of the petition within three (3) business days of filing the petition(s) with the Hearing Examiner. The petitioner shall submit evidence to the Hearing Examiner that the moorage owner(s) having been served a copy of the petition.

(6) Contents of Petitions. The petition must be in writing in the form of a sworn statement which shall include the information required by SMC 7.20.080.

(7) Signing the Petition. Each petitioner must sign and date the petition.

(b) Moorage Owner(s) Submittal: As soon as practicable, and in no case later than 30 days following the filing of the petition with the Hearing Examiner, the moorage

owner shall file with the Hearing Examiner a memorandum, affidavits and other documentation in support of the proposed increase. The moorage owner shall serve the petitioner(s) or the representative(s) of the petitioner(s) with a copy of this submittal when it is filed with the Hearing Examiner.

(c) Petitioner's Response: Within fifteen (15) days of receipt of the moorage owner(s) submittal, petitioners shall submit a responsive memorandum and affidavits.

(d) Hearing Examiner's Notice: The Hearing Examiner shall provide written notice of hearing to the party representatives at least fifteen (15) days prior to the date of the hearing. The notice shall include: the time and place for hearing; a brief statement of the legal and factual issues to be resolved; the amount of time each will have to present his or her case; and statement of the Hearing Examiner's authority and jurisdiction.

(e) Duty to Provide Information: The Hearing Examiner may require the petitioner(s) or owner(s) to provide information to assist the Hearing Examiner in determining if the proposed fee increase ensures fair and reasonable return *as per* SMC Chapter 7.20. Failure to provide information required by the Hearing Examiner may result in finding(s) against the party refusing to provide that information.

(f) Hearing Format:

Examiner's introductory statement;
Parties' opening statements;
Moorage owner(s) presentation of evidence;
Petitioners' presentation of evidence;
Rebuttal;
Closing arguments by parties.

(g) Purpose of Hearing: The Hearing Examiner shall conduct the hearing for the purpose of making a factual determination as to whether a demanded moorage fee increase is necessary as provided for in applicable ordinance(s).

(h) Decision On Petition:

(1) Time requirement. The Hearing Examiner shall issue a written decision which shall be mailed to each party representative within 30 days of the close of the record.

(2) Contents of decision. The decisions shall include, but not be limited to, a statement as to the following:

Background. The nature and background of the proceedings.

Findings. The facts that the Examiner finds relevant, credible, and/or necessary to the decision, based on the evidence presented in the hearing and those matters officially noticed.

Conclusions. The legal and factual conclusions based upon specific provisions of law or regulation and the facts adduced in the proceedings.

Decision. The Hearing Examiner's decision as to the appropriate rule, order, relief, or denial.

(i) Dismissal of Petition: On motion of the respondent moorage owner(s), the Hearing Examiner may dismiss a petition without fact finding where the requested increase does not exceed the factors specified by applicable ordinance(s). The Hearing Examiner may call for oral or written argument and/or additional information, in order to make a determination as to dismissal. The Hearing Examiner shall dismiss a petition where a voluntary solution has been agreed by the parties.

(j) Offers: As provided for in applicable ordinance(s), where parties have submitted offers, the Hearing Examiner shall examine those offers and in a separate decision, assess reasonable attorney fees.

(k) Record: The record shall include, but need not be limited to the following:

Petition by the floating home owners;
Response of the moorage owner(s);
Exhibits received or considered;
A statement of matters officially noticed (if any);
Pleadings, rulings, other documents and materials that are part of the file;
Hearing Examiner's findings, conclusions and decision;
Tape recording of the hearing.

4.02 SEIZED PROPERTY CLAIMS

In addition to the Rules of General Application in Section 2 and the Appeal Rules in Section 3, the rules in Section 4.02 apply in review of claims for the return of seized property as provided for in Chapter 69.50 of the Revised Code of Washington (RCW).

(a) Making a Claim: A timely claim and request for hearing regarding property seized shall be promptly forwarded to the Hearing Examiner by the law enforcement agency. The name and address of the person making the claim should be included for use by the Hearing Examiner to provide notice and decision to the person making the claim, unless that person notifies the Hearing Examiner in writing to use a different address.

(b) Hearing on Claim:

(1) Scheduling. Within seven (7) days of receipt of a claim, the Hearing Examiner shall schedule a date for hearing.

(2) Notice. The Hearing Examiner shall provide written notice at least twenty (20) days prior to hearing, except if the claimant and law enforcement agency may agree to a shorter period of notice. Notice of hearing shall be sent to the person(s) who filed the claim and to the law enforcement agency. The notice shall include:

Time, place and nature of hearing;
Legal authority and jurisdiction for the hearing;
Hearing Examiner file and Police Department incident numbers.

(3) Format. The order of hearing for claims is generally as follows:

Examiner's introductory statement;
Department's presentation of evidence;
Claimant's presentation of evidence;
Rebuttal;
Closing argument of parties.

(c) Decision After Hearing: Within thirty (30) days of the close of the record, the Hearing Examiner shall issue a written decision and send a copy of that decision to the claimant and to the Department. The contents of the decision shall be those prescribed in HER 3.18(c), except that the Hearing Examiner's decision on the outcome shall be whether the claimant's interest in the seized property is, or is not, forfeit.

(d) Administrative Dismissal: Where the person making the claim withdraws or where the Hearing Examiner is satisfied that a claim has been resolved by the return of the subject property to the person making the claim, or that the matter has been removed to a court of competent jurisdiction, the Hearing Examiner shall issue an Order of Administrative Dismissal.

(e) Forfeiture by Default: Where the Hearing Examiner is satisfied that after notice of seizure was properly served, no timely claim and request for hearing was filed, the Hearing Examiner shall issue an Order of Forfeiture by Default, forfeiting the property to the law enforcement agency. Where it is shown that proper notice to claimant was lacking, or for other good cause, the Hearing Examiner may set aside Forfeiture by Default and hold a hearing on the claim.

4.03 AUTOMATIC APPEALS

In addition to the Rules of General Application in Section 2 and the Appeal Rules in Section 3, the Rules in Section 4.03 apply in those appeals where the Code provides for an appeal to be automatic (*i.e.*, the Code does not require the person(s) subject to Departmental decision or other appealable action to file an appeal in order to have a hearing before the Hearing Examiner).

(a) Scheduling Hearing: The Department shall contact the Office of Hearing Examiner and schedule a date and time for hearing prior to issuing the Department's order or other communication that informs the appellant of the Department's action.

(b) Notice of Hearing: The Department shall be responsible for providing the notice to the person(s) subject to the Department's action consistent with HER 3.10 in the manner prescribed by applicable Code section(s). Where the applicable Code section(s) do not so prescribe, the Department shall provide notice at least twenty (20) days in advance of the date of hearing in the manner provided in HER 2.05.

(c) Hearing and Decision: The hearing shall be conducted and the decision rendered and issued in accord with these Rules unless the applicable Code section(s) prescribe otherwise.

4.04 CIVIL SERVICE APPEALS

Matters delegated or referred to the Hearing Examiner for decision, recommendation, certification or other authorized action by the Civil Service Commission, are governed by the Rules of Practice and Procedure adopted by the Civil Service Commission.

4.05 NOISE ORDINANCE APPEALS

In addition to the Rules of General Application in Section 2 and the Appeals Rules in Section 3, the Rules in Section 4.05 apply in review of appeals of noise ordinance matters as provided for in SMC 25.08.770, .780, and .790.

(a) Appeal Form: The appeal shall be in the form specified by the Code (see: SMC 25.08.780). If no form or format is specified by the Code, the appeal shall conform to HER 3.01(d).

(b) Refund of Fee: If the Hearing Examiner's decision reverses or substantially modifies the Department's order or other action, the Hearing Examiner shall direct that the appeal fee be refunded to the appellant.

4.06 DISCRIMINATION COMPLAINTS

Rules for matters coming before the Hearing Examiner pursuant to SMC 14.04, Employment Discrimination Ordinance, and SMC 14.08, Fair Housing/Business Practices Ordinance, are under separate cover.

SECTION 5 RECOMMENDATIONS TO CITY COUNCIL

In addition to the Rules of General Application in Section 2.0, the rules in Section 5 shall govern review of matters where the Hearing Examiner is to hold a public hearing and prepare a recommendation for the City Council. Matters included involve, but are not limited to, various Council land use actions: Rezone Petition, SMC Chapter 23.34; Subdivision, SMC Chapter 23.22; Major Institution Master Plan, SMC Chapter 23.69; Council Conditional Use, SMC Chapters 23.44 and 23.50; Landmark Controls and Incentives, SMC Chapter 25.12.

5.01 PUBLIC HEARING NOTICE

(a) Contents. Notice of a public hearing shall be in writing and include:

- (1) Time and place for hearing;
- (2) Type of decision under consideration;
- (3) Location of property involved;
- (4) Director's recommendation;
- (5) Environmental determination, if required, and appeal information regarding that determination.

(b) Time Requirement. Notice of the hearing shall be given within the time required by the applicable ordinance. Where no time is specified, notice shall be given no less than 20 days prior to hearing.

(c) Responsibility for Serving Notice. The Department of Planning and Development shall be responsible for providing notice of public hearing for Council Land Use decisions (SMC Chapter 23.76). The Hearing Examiner shall be responsible for providing notice or causing notice to be given for other public hearings as required by applicable ordinance(s).

(d) Method of Service. Notice of hearing shall be given in person, by U.S. mail, or, for City departments, by the City's regular interoffice mail service, or as required by ordinance.

(e) Record of Notice. A copy of the notice of hearing shall be made part of each official case record.

5.02 NATURE AND PURPOSE OF PROCEEDINGS

Public hearings shall generally be informal in nature, but conducted in such manner that the information and facts relevant to a particular proceeding will become the most readily and efficiently available to the Examiner. Irrelevant, immaterial, unreliable or unduly repetitious testimony, exhibits, or other information presented may be excluded by the Examiner.

5.03 RIGHTS OF PARTIES AND INTERESTED PERSONS

(a) Any party to a matter subject to a public hearing before the Hearing Examiner has the right to: receive notice of hearing and other Hearing Examiner orders or actions; to testify and present evidence; to ask questions of those testifying at hearing; and to receive a copy of the Hearing Examiner's recommendation.

(b) Interested persons who testify or submit information at the public hearing, shall be sent a copy of the Hearing Examiner's recommendation and be notified regarding subsequent Hearing Examiner proceedings, orders, or actions related to the matter considered at the public hearing.

5.04 FORMAT OF PUBLIC HEARING

(a) A public hearing shall include, but need not be limited to, the following:

- (1) Examiner's introductory statement;
- (2) Report by the Director (including introduction of the official file, reference to exhibits, and a summary of the recommendation of the Department);
- (3) Testimony by the applicant or petitioner;
- (4) Public comment in support of or in opposition to the application or petition;
- (5) Opportunity for parties and Examiner to ask questions;
- (6) Opportunity for presentation of additional information as rebuttal.

(b) The Examiner may alter or modify the order of hearing if and as necessary to best provide for the presentation and understanding of information.

(c) Questions asked of citizens expressing their opinions shall generally be limited to clarification.

(d) Persons testifying as expert witnesses are subject to cross-examination.

5.05 HEARING EXAMINER'S RECOMMENDATION

(a) Issuance. The Hearing Examiner shall issue a written recommendation as required in the applicable ordinance(s).

(b) Contents. The Hearing Examiner's recommendation shall include, but not be limited to, a statement of the following:

- (1) Background. The nature and background of the proceeding.
- (2) Findings. The individual facts that the Examiner finds relevant, credible, and requisite to inform the City Council's deliberations and decision in the matter.
- (3) Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.

- (4) Recommendation. Hearing Examiner's recommendation to the City Council as to whether the application or petition should be approved, denied, or remanded.
- (5) Postscript. Information regarding subsequent procedural step(s).

5.06 RECORD OF THE HEARING EXAMINER'S RECOMMENDATION

The record of a public hearing shall include, but need not be limited to, the following materials:

- (a) Application or petition;
- (b) Director's report and recommendation;
- (c) Written comments from the public and other agencies received during the Director's review;
- (d) Exhibits and written comments received by the Hearing Examiner prior to the close of the record;
- (e) Statement of matters officially noticed (if any);
- (f) Hearing Examiner's findings, conclusions, and recommendation;
- (g) Notice(s) and mailing list(s) for notice and decision;
- (h) The tape recording of the public hearing.